



U.S. Department of Veterans Affairs
Office of General Counsel

Torts Law Group (02)
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Certified Mail

September 28, 2018

Michelle Rose
13232 Painesville Warren Road
Painesville, OH 44077

RE: Administrative Tort Claim of Billy Ray Rose

Dear Ms. Rose:

The Department of Veterans Affairs (VA) has thoroughly investigated the facts and circumstances surrounding the above referenced administrative tort claim you have filed against the Department of Veterans Affairs wherein you alleged that providers at the Cleveland VA Medical Center failed to provide appropriate care to your late father on October 21, 2017, resulting in personal injury and wrongful death. Our adjudication of the claim included a review of his VA medical records, information submitted in support of the claim, and reviews of the claim by medical reviewers in different parts of the country.

The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b) and 2671-2680, under which you filed this claim, provides for monetary compensation when a Government employee, acting within the scope of employment, injures another by a negligent or wrongful act or omission. Medical negligence means there was a breach in the standard of care and that breach proximately caused an injury. The standard of care is the level at which similarly qualified medical professionals would have managed the care under the same or similar circumstances. Our review concluded that there was no negligent or wrongful act on the part of an employee of the Department of Veterans Affairs (VA), acting within the scope of his or her employment. Accordingly, this claim is hereby denied.

If you are dissatisfied with this decision, you may file suit directly under the FTCA, 28 U.S.C. §§ 1346(b) and 2671-2680. The FTCA provides that when an agency denies an administrative tort claim, the claimant may seek judicial relief in a Federal district court. The claimant must initiate the suit within six months of the mailing of this notice as shown by the date of this denial (28 U.S.C. § 2401(b)). In any lawsuit, the proper party defendant is the United States, not the Department of Veterans Affairs.

Please note that FTCA claims are governed by a combination of Federal and state laws. Some state laws may limit or bar a claim or law suit. VA attorneys handling FTCA claims work for the Federal government, and cannot provide advice regarding the impact of state laws or state filing requirements.

Sincerely,

A handwritten signature in black ink, appearing to read 'CH', with a stylized flourish at the end.

Cynthia Hernandez
Deputy Chief Counsel